

**MINUTES OF THE MEETING OF THE LAWYERS' ADVISORY COMMITTEE  
MARCH 14, 2007  
TRENTON, NEW JERSEY**

**On Wednesday evening, March 14, 2007 at 6:00 p.m., the Lawyers Advisory Committee met at 130 South American Grill & Sushi, located in Hamilton, NJ. In attendance from the Court were Judge Stern, Clerk, Jim Waldron, and Staff Attorney, Jeanne Naughton.**

- 1. Call to Order and Approval of Minutes from meeting of December 6, 2006.**
2. Committee Reports: Auctioneer Compensation - Local Rule 2016-1(g) – Warren Martin

Attorney Warren Martin reported that the subcommittee proposing revision to D.N.J. LBR 2016-1(g) (Warren Martin, Charlie Forman, Valerie Hamilton and Diane Vuocolo) met on several occasions, including with auctioneers. The Subcommittee actively reviewed 92 Districts and discovered that 75 of those Districts had no rule governing auctioneers. 17 Districts had a rule and of those 8 were similar to New Jersey insofar as auctioneers' compensation is based on a sliding scale. These courts were primarily in the North East.

Warren explained the three subparagraphs of the proposed rule.

**DNJ LBR 2016-1(g)(1) contains the general operative rule - and modifies the former local rule from a declining scale commission to an equal incentive commission structure.** He indicated that some other districts have taken this approach (Utah, Iowa, among others). He further indicated that the intent of the rule is to provide an increased commission that is fair to the auctioneers. Under the present practice, anecdotal experience is that the rule is honored in the breach because expenses are "loaded up" with all types of additional cost items (salaries of on site employees for e.g.). Where commissions were lower, auctioneers inflated expense component as compensation. It is anticipated that with the new rule, courts will now scrutinize the expense component of the proposed compensation more rigorously under the new rule thus the rule has been both liberalized and tightened at the same time (i.e commissions will be higher, less will be included within expenses). The purpose is to provide a fair playing field for all auctioneers including those smaller local auctioneers who often suffer more under the sliding scale than do the larger auctioneers.

The last sentence of the first paragraph deals with buyer's premium mechanism which is outlawed in certain states (Rhode Island and Massachusetts). Texas Northern authorizes buyer's premium under certain circumstances. Judge Stern had a concern as to when the buyer's premium should be disclosed. While all agreed that the intent

would be that there would be prior disclosure, he suggested that the wording might be changed to the following:

~~A buyer's premium may be considered and approved, particularly where it serves to reduce or eliminate the commission described above. No buyer's premium may be awarded an auctioneer without disclosure and court approval in advance of the auction.~~

**Subsection (g)(2)** is new and exempts approval of auctioneer commissions on a no look basis in the interest of court efficiency and for the benefit of the estate. Therefore, no motion for approval of fees and expenses need be filed where the amount to be paid to the retained auctioneer does not exceed the lesser of \$7,500 or 15% of the gross proceeds of sale.

**Subsection (g)(3)** is a carve out for sales where the auctioneer assumes additional risk by guaranteeing the auction will net a minimum recovery for the estate, or purchases assets outright at the outset. In those situations, where the auctioneer assumes a risk, case by case determinations regarding commissions should be sought.

## **B. Chapter 13 Committee – Jaimie Finberg**

**(i) Increase in attorney fees awarded to secured creditors from \$250 to \$350 plus filing fee** - Discussion ensued regarding the need to link the fee to the work that the creditor does to generate the fee. The fee needs to be paid for work of the local counsel, that is, not split with the out of state attorney. No firm recommendation was made, but group agreed to look into this suggestion.

### **(ii) Issues raised by Isabel Balboa: Motions to refinance/sell**

**The Chapter 13 sub-committee recommended that the Board of Judges approve modifications to the following forms: .**

#### **Form of order to suspend mortgage/trustee payments-**

This form needs to be modified to provide for the number of payments to be suspended as well as the new trustee payment going forward. See proposed form of order included in Isabel's letter (attachment).

#### **Form of order reinstating case/stay -Form of order reinstating case/stay (attachments) -**

This form needs to be modified to provide for any funds to be capitalized as well as the new payment going forward. See proposed form of order included in Isabel's letter (attachment).

**Ch. 13 model plan and Debtor's certification in opposition to MFR/NOD.** These forms need to be modified to add space..

**Order to reinstate case/stay when a secured creditor is involved.** LAC marked up the court's recommended form order resolving Motion to Vacate Stay/ Motion to Dismiss with Conditions to also cover the situation where the stay/case is being reinstated and arrears are being cured.

There was also a short discussion about objections filed to section 363 sales orders. This was recognized as a practice issue and not something that can necessarily be changed via revision to the form. Judge Stern indicated that he has not signed a free and clear order in a Chapter 13 because title issues may develop at closing. Moreover, issues concerning notice are raised.

A. Attorney Discipline Mentors Subcommittee – Bunce Atkinson-  
(no report)

### 3. Clerk's Report

Jim Waldron reported that some filing statistics nationally are on the rise, particularly in Iowa, Michigan Eastern, Georgia Northern and Ohio Bankruptcy Courts. New Jersey filings are on the rise to a much lesser degree. Publicity was recognized as being a potentially important component. Jim recently had articles of an educational nature published in the Bergen Record among others in which attorney and LAC member, Michael Sirota was quoted. Jim indicated that if filings remain status quo, the Clerk could lose 20 to 30 positions. The Judiciary as a whole escaped operating under a continuing resolution. Finally, attorneys were advised that they could now receive FTR Gold downloads for free on an experimental basis through PACER.

### 4. Liaison Reports: District Court; U.S. Trustee; IRS; N.J. Attorney General; NJ Bar Bankruptcy Section

Martha Hildebrandt reported from the **Office of the United States Trustee**. Debtor audits are continuing in Chapters 7 and 13 cases. Martha indicated that thanks to the efforts of Sandi Radice and Ed Gordon of the Clerk's Office, a mortgage scheme was busted involving the filing of 37 false petitions. Their efforts are leading to an indictment. Rachel Lehr reported from the **NJ Attorney General** that her office is seeing more bankruptcy cases with environmental issues than ever before. The NJ Attorney General report also included a request that the CM/ECF local counsel requirement be "relaxed" as in other jurisdictions for

admittance of state/government attorneys. Jim Waldron advised that this issue would have to be pursued at the District Court level regarding L.Civ. R. Rule 101.1 (c ) pro hac vice admission.

## **5. Old Business:**

### **A. Indexing of local rules. Jeanne Naughton**

Jim Waldron and Judge Stern discussed the idea that an index based on the Virgin Islands indexing project would be undertaken by the Court. This would be an invaluable tool with hyperlinks to local rules-general orders and local forms based upon subject matter listed alphabetically. The index would be available on the Court's website under Local Rules and General Orders. The Court would be looking into initiation of this project over the next few months.

### **B. Obtaining Ex parte orders seeking temporary restraints without notice to the debtor. Can use of ECF be avoided in this situation? Pat Staiano**

Jim Waldron reported that this is an isolated case but that the concern is whether the e filer can file what amounts to a private docket entry. Attorneys with a similar issue should call the Court beforehand on case by case basis and the mechanics of this can be worked out per a judge's instruction in consultation with the Clerk.

## **6. New Business**

John Morton proposed Warren Martin to be the Chair of the recently formed local rules Subcommittee, which will include the following individuals as members: Judge Ferguson, Jeanne Naughton, Jaimie Finberg, and Scott Sherman. .

### **A. Issue raised by Andrew Altenburg, Esquire – Discharge of Felony Conviction (attachments)(not discussed)**

### **B. Issues raised by Herbert Raymond, Esquire:(raised but not resolved)**

1. Add to Supplemental Fees for Debtors attorneys for response to trustee/creditor' objection to

confirmation. Recommendation was \$250.00 - \$400.00

2. Add to Supplemental Fees for Debtors attorneys for preparation of order shortening time.  
Recommendation was \$200.00
3. Application for Retention and For Approval of Real Estate attorneys fees or Real Estate broker's commissions. Is it possible to seek approval of the fee/commission to be paid at closing when the request for retention of the professional is made?

C. Issue raised by Jerold Kulbeck, Esquire – Proposal to draft form of order regarding information that must be provided by creditor's committees to creditors. Section 1102(b)(3) (Ch 11 sub-committee).

These issues are under continuing study - form orders may be drafted to recognize appropriate distinctions in treatment.

7. Pick Date for Next Meeting - **June 6<sup>th</sup>, 2007 Location TBD.**